



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: The Monroe County Planning Commission

From: Joseph Haberman, AICP, Principal Planner *L.*

Through: Townsley Schwab, Senior Director of Planning & Environmental Resources *TS*

Date: February 16, 2010

Subject: *Request for a Setback Variance for property located on Little Conch Key, aka Walkers Island, mile marker 62, Real Estate Nos. 00099090.000000 & 00099090.000100*

#### I REQUEST:

The applicant is requesting approval of a variance of two feet (2') from the required ten foot (10') side yard setback along the western property line in order to receive after-the-fact building permit approval for two elevated concrete slabs that cantilever off the building and an air conditioning (a/c) unit, installed without the benefit of building permit approvals.



Subject Property (outlined in blue), (2009)

Following a review of an as-built boundary survey and a site visit, staff discovered that a concrete footing that supports one of the building's stone veneer piers, a ground level

1 concrete slab with swimming pool equipment atop, a proposed driveway and a proposed  
2 trash enclosure are also partially located or will be located in the required side yard setback.  
3 In addition, one of the existing elevated concrete slabs has nothing on it; however the  
4 applicant has stated that he plans to install a generator on the slab if the variance is approved.  
5 Although not described in the variance application, these structures also require setback  
6 variances and building permit approval to remain. However, excluding the driveway and  
7 trash enclosure, none of these structures extend further into the required setback than the  
8 elevated concrete slabs applied for; therefore the planning commission may decide on  
9 whether or not they may be approved to be in the required setback as the variance request  
10 was for 2'.

11  
12 The proposed locations of the driveway and trash enclosure encroach 5' into the setback.  
13 Their proposed locations cannot be approved unless a) this application is amended to request  
14 to a 5' variance and the item is re-advertised or b) an additional variance application is filed  
15 concerning only the driveway and trash enclosure. Additionally, the applicant may request a  
16 variance of 2' under this application and if approved, shift the driveway and trash enclosure  
17 at least 3' into the as-of-right buildable area of the site.

18  
19 Note: The request was submitted in the form of administrative variance application and a  
20 public hearing was not initially required. However, in accordance with MCC §102-86(k),  
21 during the 30 calendar days of required posting of the application, an adversely affected  
22 owner of real property requested that a public hearing be scheduled on the application.

23  
24 **Location:**

25  
26 Address: Unit 8, Walkers Island, Little Conch Key, mile marker 62 (oceanside)

27 Legal Description: Parcel of land on Little Conch Key, Section 15, Township 65 South,  
28 Range 34 East

29 Real Estate Numbers: 00099090.000000 & 00099090.000100  
30

31 **Applicant:**

32  
33 Owner: Little Conch Key Development Corp.

34  
35 Agents: John McCarthy and Patty Silver  
36

37 **II RELEVANT PRIOR COUNTY ACTIONS:**

38  
39 On January 27, 2003, a letter of understanding was issued to an agent of the property owner.  
40 The letter stated that the property may be developed with eight single-family residential units  
41 and provided information relating to certain regulations of the land development code.  
42 Although the letter provided shoreline setback requirements, the non-shoreline setback  
43 requirements were not provided nor discussed. A revision to the letter was issued on May 1,  
44 2003 adjusting the county's position on the shoreline setback requirements.

45  
46 On December 22, 2006, Building Permit 062-6982 was issued for site work and the  
47 construction of infrastructure on the subject property.

1  
2 On November 13, 2007, Building Permit 072-1885 was issued for the construction of the  
3 single-family residence in question, identified as Unit 8. The residence is currently under  
4 construction and has yet to receive a certificate of occupancy (note: there are building permit  
5 applications on file for the other seven single-family residences; however they are not  
6 relevant to this application).

7  
8 On May 8, 2009, the applicant applied to the Planning and Environmental Resources  
9 Department to plat the subject property into eight residential lots. The application is currently  
10 under review.

11  
12 Revision A to Building Permit 072-1885 was issued on April 28, 2009 for a modification to  
13 the lower enclosure.

14  
15 Revision B to Building Permit 072-1885 was issued on September 9, 2009 for the swimming  
16 pool and equipment.

17  
18 During a building inspection for Building Permit 072-1885 in late 2009, it was discovered  
19 that elevated concrete slabs and the a/c unit were not constructed in accordance with the  
20 approved site plan. A revision to the plan was requested by the Building Department at that  
21 time; however the Planning & Environmental Resources Department cannot approve any  
22 revision for development in the required setback without a variance to the setback  
23 requirements.

24  
25 On October 21, 2009 the applicant submitted an administrative variance application to have  
26 the elevated concrete slabs' and a/c unit's locations approved. The application was processed  
27 and surrounding property owner notifications were sent on November 10, 2009. An  
28 adversely affected property owner filed a request for a public hearing on December 11, 2009.  
29

30 **III BACKGROUND INFORMATION:**

- 31  
32 A. Size (of site): approx. 71,798 ft<sup>2</sup> (1.6 acres) of upland; (of proposed lot): approx. 8,000 ft<sup>2</sup>  
33 B. Land Use District: Mixed Use (MU)  
34 C. Future Land Use Map (FLUM) Designation: Mixed Use/Commercial (MC)  
35 D. Tier Designation: Tier 3  
36 E. Existing Use: Multi-Family Residential (under construction on the subject parcel)  
37 F. Existing Vegetation / Habitat: Scarified upland with mangroves along the shoreline  
38 G. Community Character of Immediate Vicinity: Residential (under construction on the  
39 subject parcel) and Transient Residential (on contiguous parcel)  
40 H. Flood Zone: part VE-EL 11 & part VE-EL 13  
41

IV REVIEW OF APPLICATION:

As set forth in MCC §130-186, the required non-shoreline setbacks for the MU district are as follows: Front yard – 25'; Rear yard – 20'; and Side yard – 10' / 15' (where 10' is the required side yard for one side and 15' is the minimum combined total of both side yards).

Since the proposed plat has not been approved, the subject property is recognized only as part of the larger single parcel, not as one of the smaller proposed eight lots. Consequently, the single-family residence in question is impacted by only two required setbacks: a non-shoreline side yard setback of 10' along the western property line and a shoreline setback of 20' for principal structures along the shoreline to the south.

In the application, the applicant asserts that he was verbally informed by staff that the side yard setback was 5' as opposed to 10'. Although the setback regulations in the MU district could allow a 5' setback, staff found no evidence to support the applicant's claim. Pursuant to MCC §130-186, the first number [10'] is the minimum for any single side yard where only one side yard exists. There is no other side yard as the property is surrounded on the other side by a shoreline setback. Therefore the setback is 10'. To support the fact that the applicant was initially informed that the setback was 10', the site plan submitted with the building permit applications, generated by Farrell Design Association, clearly shows and labels a 10' setback line. In addition, a separate site plan by Perez Engineering & Development, shows that the all development, other than a driveway, would be in compliance with a 10' setback.

Therefore, a variance is necessary for the Planning Department staff to approve the following proposed development as well as existing development built without proper approvals within the non-shoreline setback:

*Existing 8' x 4' Elevated Concrete Slab and Existing A/C Unit:*

An as-built boundary survey by R.E. Reece indicates that the dimensions of the existing elevated concrete slab are 8'L x 4'W and that the slab would be 8'0" from the property line. The dimensions of the existing a/c unit are unknown; however it does not overhang the slab, so it is less than 8'L x 4'W. Although the slab extends 4' from the building façade, it encroaches only 2' into the setback, therefore approximately 50 percent of the slab and a/c unit are within the property's as-of-right buildable area.

The slab is located one-story above the ground; however staff was not provided with information providing the dimensional height of the slab (approximately 6") or the height of a/c unit (approximately 4').

A main level floor plan by Island Style Architects for the residence, which was submitted in the building permit application for Unit 8, indicates the slab was initially proposed to be 5' x 3'. However, Building Permit 072-1885 was conditioned that the "a/c unit must be above MSL and cannot violate setbacks" and staff had the floor plan redlined to show that the slab



1 would be removed from the scope of work. Therefore, the slab and a/c unit were never  
2 permitted and are considered unlawful improvements.

3  
4 *Existing 5'x 3' Elevated Concrete Slab and Proposed Generator:*

5  
6 An as-built boundary survey by R.E. Reece indicates that the dimensions of the existing  
7 elevated concrete slab are 5'L x 3'W and that the slab would be 9'0" from the property line.  
8 Although the slab extends 3' from the building façade, it encroaches only 1' into setback,  
9 therefore approximately 66 percent of the slab and a/c unit are within the property's as-of-  
10 right buildable area.

11  
12 The slab is located one-story above the ground; however staff was not provided with  
13 information detailing the dimensional height of the slab (approximately 6").

14  
15 There is no existing equipment atop the structure and none of the documents included in the  
16 building permit or variance application identify its purpose. The applicant has stated it is his  
17 intention to install a generator on the slab if the variance approved.

18  
19 *Existing Ground Level Concrete Footing Supporting Building's Pier:*

20  
21 Although not described in the administrative variance application, upon review of the as-built  
22 boundary survey by R.E. Reece, staff discovered that the footing beneath one of the  
23 building's piers was constructed partially in the side yard setback. The pier is covered by a  
24 decorative stone veneer that tapers from the ground upward; however the concrete base is the  
25 only part of the structure that encroaches into the setback.

26  
27 Per the as-built boundary survey, the majority of the northernmost pier supporting the front  
28 of the building is located within the site's as-of-right buildable area. However, the boundary  
29 survey indicates that a part of the supporting footing would be 9'7" from the property line.  
30 The approved building plans indicated that the pier would be built in compliance with the 10'  
31 setback.

32  
33 *Existing Ground Level Concrete Slab and Swimming Pool Equipment:*

34  
35 Although not described in the administrative variance application or shown on the as-built  
36 boundary survey by R.E. Reese, staff discovered on a site visit that a ground level concrete  
37 slab with swimming pool equipment was installed partially in the 10' side yard setback.

38  
39 The slab is located at ground level; however since the development was presumably built and  
40 discovered after the variance application was submitted, staff was not provided with  
41 information detailing the dimensions of the slab or the equipment. However, measuring the  
42 development on-site, staff determined that the slab encroaches approximately 1' into the  
43 required setback.

1 Revision B to Building Permit 072-1885 was issued for the swimming pool and equipment.  
2 The revision was not reviewed by Planning Department staff. A detail and a ground level  
3 electric plan by Island Style Architects shows the pool equipment in the vicinity of its  
4 location on site, but did not provide dimensions or setback details. The Building Department  
5 approved the equipment with the understanding that the applicant would install the  
6 equipment in compliance with the setback requirements.

7  
8 *Proposed Driveway and Proposed Trash Enclosure:*  
9

10 Although not described in the administrative variance application, upon review of the site  
11 plans in the building permit applications, staff found that a proposed gravel driveway, 12' in  
12 width, and trash enclosure to be constructed at a later date would be located partially in the  
13 10' side yard setback. According to both the site plans by Perez Engineering & Development  
14 and by Farrell Design Association, the driveway would be located 5' from the property line  
15 and the trash enclosure would be located 3' from the property line at its nearest point.

16  
17 It is important to note that although this site plan was stamped by Planning Department staff,  
18 it was done so for the purposes of approving the locations of the footprints of the proposed  
19 buildings. A building permit to install the actual driveway in this location has not been  
20 approved.

21  
22 *Adversely Affected Property Owner*  
23

24 Following an initial review of this application, staff issued a preliminary recommendation of  
25 approval with conditions for only the elevated concrete slabs, the a/c unit and the pier.  
26 However, subsequently additional development was discovered in the required setback since  
27 that time. The recommendation was pending the required 30-day public comment period,  
28 and in the notification letter staff reserved the right to modify the recommendation and any  
29 conditions upon input from neighboring property owners.

30  
31 The adversely affected property owner who requested the public hearing (owner of the  
32 neighboring contiguous property to the west) did not provide written rationale as to why the  
33 variance should be denied. However, agents for the property owner verbally indicated that  
34 their client's concerns related to the mass of the building, the impact of the development on  
35 their client's property value and noise generated from the a/c unit. They were also concerned  
36 that the as-built boundary survey provided by the applicant was incorrect and that other  
37 structures shown in compliance on the survey may in fact encroach into the setbacks.

38  
39 The agents for the neighboring owner also expressed doubt that the building and its accessory  
40 structures were constructed in compliance with the shoreline setback requirements. It should  
41 be noted that the boundary surveys in the application for Building Permit 072-1885 were  
42 prepared by a licensed surveyor and indicate that the development was prepared in full  
43 compliance with the shoreline setback requirements. However since the neighboring owner  
44 submitted a second boundary survey indicating a different path of the mean high water line,  
45 Environmental Resources Department staff is researching the issue further. In any event,

1 since the applicant's documentation is presumed correct until proven otherwise and due to  
2 the fact under the land development code there are no variances available to shoreline  
3 setbacks for this type of development, shoreline setback compliance is not addressed in this  
4 staff report and should not be addressed as part of this application.  
5

6 *Pursuant to MCC §102-186, a variance may only be granted if the applicant demonstrates*  
7 *that all of the following standards are met:*  
8

9 *A. The applicant demonstrates a showing of good and sufficient cause:*  
10

11 In the application, among other points, the applicant asserts that he was informed by staff  
12 that he may build to a 5' setback and that the a/c unit's current location is the only place  
13 that the a/c unit can be sited due to the design of the residence.  
14

15 Since there is no evidence supporting the claim of a lesser 5' setback and a building  
16 permit or revision for the a/c unit and slabs was never applied for, the assertion relating to  
17 alleged staff misinformation does not demonstrate a showing of good and sufficient  
18 cause. However, based on other rationale, staff has found that the applicant has met this  
19 standard for the location of some of the development, while not meeting the standard for  
20 other:  
21

22 Concerning the existing 8' x 4' elevated concrete slab and existing a/c unit, staff has  
23 found that the applicant has demonstrated a showing of good and sufficient cause.  
24 Although the slab and a/c unit were constructed without building permit approval, there  
25 are few other feasible alternatives for the a/c unit's relocation.  
26

27 Concerning the existing 5'x 3' elevated concrete slab and proposed generator, staff found  
28 that the applicant has not demonstrated a showing of good and sufficient cause.  
29 Although the slab is in existence, it is currently vacant of equipment, a generator is not a  
30 necessity or requirement for a residence and there are several other alternative locations  
31 for a generator, especially the portable varieties.  
32

33 Concerning the concrete footing supporting the pier, staff has found that the applicant has  
34 demonstrated a showing of good and sufficient cause. Although staff found no building  
35 or site plan on file that approved the pier in this precise location, the structure is in place  
36 and its partial location in the setback is minimal and has no visual impact as it is only 6"  
37 in height.  
38

39 Concerning the existing ground level concrete slab and swimming pool equipment, staff  
40 has found that the applicant has demonstrated a showing of good and sufficient cause.  
41 Although staff found no site plan on file that approved the slab and equipment in this  
42 precise location, a building permit revision for the structures was issued by the Building  
43 Department and the structure's partial location in the setback has no significant visual  
44 impact.  
45

1 Concerning the proposed driveway, staff has found that the applicant has demonstrated a  
2 showing of good and sufficient cause for a variance of 2'; however not for 5' as shown  
3 on the site plan. The site is entitled to redevelop eight lawfully-established dwelling units  
4 and placing the driveway on this side of the site results in the applicant having to locate  
5 the remaining seven dwelling units further away from the developed neighboring  
6 property.

7  
8 Concerning the proposed trash enclosure, staff found that the applicant has not  
9 demonstrated a showing of good and sufficient cause. There are several other viable  
10 locations for a trash enclosure within the as-of-right buildable area of the site.  
11

12 **B. *Failure to grant the variance would result in exceptional hardship to the applicant:***  
13

14 In the application, among other points, the applicant asserts that he was informed by staff  
15 that he may build to a 5' setback and that based on this advice, he proceeded with  
16 constructing the residence and modifying the plans to have accessory development built  
17 to a 5' setback. In addition, for financial reasons, the applicant cites the need for a  
18 certificate of occupancy as soon as possible and that the modification of the building at  
19 this point would result in detrimental and disastrous repercussions.  
20

21 Since there is no evidence supporting the claim of a lesser 5' setback and a building  
22 permit or revision for the a/c unit and slabs was never applied for, the assertion relating to  
23 alleged staff misinformation does not demonstrate an exceptional hardship. Furthermore,  
24 staff does not consider the self-inflicted cost of relocating or removing unpermitted  
25 improvements the sole basis for an exceptional hardship. However, based on other  
26 rationale, staff has found that the applicant has met this standard for the location of some  
27 of the development, while not meeting the standard for other:  
28

29 Concerning the existing 8' x 4' elevated concrete slab and existing a/c unit, staff has  
30 found that the applicant has demonstrated an exceptional hardship. Although the slab and  
31 a/c unit were constructed without building permit approval, there are few other feasible  
32 alternatives for the a/c unit's relocation.  
33

34 Concerning the existing 5'x 3' elevated concrete slab and proposed generator, staff found  
35 that the applicant has not demonstrated an exceptional hardship. Although the slab is in  
36 existence, it is currently vacant of equipment, a generator is not a necessity or  
37 requirement for a residence and there are several other alternative locations for a  
38 generator, especially the portable varieties.  
39

40 Concerning the concrete footing supporting the pier, staff has found that the applicant has  
41 demonstrated an exceptional hardship. Although staff found no building or site plan on  
42 file that precisely approved the slab and pier in this exact location, the structure is in  
43 place and its modification would not result in any visual impact as it encroaches into the  
44 setback only by a few inches and it is only 6" in height.  
45



1 Concerning the existing ground level concrete slab and swimming pool equipment, staff  
2 has found that the applicant has demonstrated an exceptional hardship. Although staff  
3 found no site plan on file that precisely approved the slab and equipment in this exact  
4 location, a building permit revision for the structures was issued by the Building  
5 Department and a site plan was not requested at that time. The applicant relied upon the  
6 Building Department's approval to construct the slab.

7  
8 Concerning the proposed driveway, staff has found that the applicant has demonstrated  
9 an exceptional hardship for a variance of 2' (however not for 5' as shown on the site  
10 plan). The site is entitled to redevelop eight lawfully-established dwelling units and  
11 placing the driveway on this side of the site results in the applicant having to locate the  
12 remaining seven units further away from the developed neighboring property.

13  
14 Concerning the proposed trash enclosure, staff found that the applicant has not  
15 demonstrated an exceptional hardship. There are several other viable locations for a trash  
16 enclosure within the as-of-right buildable area of the site.

17  
18 C. *Granting the variance will not result in increased public expenses, create a threat to*  
19 *public health and safety, create a public nuisance, or cause fraud or victimization of the*  
20 *public:*

21  
22 In the application, among other points, the applicant asserts there will be no adverse  
23 affect on the only neighbor since he is requesting a minimal variance and his  
24 development would be buffered from the neighboring property with vegetation. He also  
25 asserts that granting of the variance would in fact decrease public expense in that the  
26 county would not have to pursue code enforcement proceedings, litigation expense and  
27 additional inspections.

28  
29 Since one of the neighboring owner's concerns related to noise from the a/c unit, staff has  
30 found that the applicant has met this standard for the location of some of the  
31 development, while not meeting the standard for other:

32  
33 Concerning the existing 8' x 4' elevated concrete slab and existing a/c unit, staff has  
34 found that the variance would not result in increased public expenses, create a threat to  
35 public health and safety or cause fraud or victimization of the public. However, based on  
36 the neighboring owner's legitimate objection relating to noise from the a/c unit, staff has  
37 found that the applicant has not fully demonstrated that the a/c would not create a public  
38 nuisance. Although there are few other feasible alternatives for the a/c unit's relocation,  
39 the approval of this variance would result in an a/c unit that generates significant noise  
40 being closer to the neighbor's property than otherwise allowed. Prior to the neighbor's  
41 objection, staff attempted to mitigate potential concern by requiring buffering in the form  
42 of dense vegetation. Although the applicant planted bamboo, much of the vegetation has  
43 died and one can see and hear the a/c unit from the neighboring property at this time. In  
44 addition, even with a denser buffer than that in place, the neighboring owner's agents  
45 have stated a buffer would not alleviate their client's concern.

Concerning the existing 5'x 3' elevated concrete slab and proposed generator, staff has found that the variance would not result in increased public expenses, create a threat to public health and safety or cause fraud or victimization of the public. However, based on the neighboring owner's objection relating to noise from the a/c unit, staff has found that the applicant has not fully demonstrated that noise from a generator, in addition to the a/c unit, would not create a public nuisance.

Concerning the concrete footing supporting the pier, the existing ground level concrete slab and swimming pool equipment and the proposed driveway, staff has found that the variance would not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public.

Concerning the proposed trash enclosure, staff has found that the variance would not result in increased public expenses, create a threat to public health and safety or cause fraud or victimization of the public. However, based on the neighboring owner's objection relating to noise, staff has found that the applicant has not fully demonstrated that a trash enclosure at this location would not create a public nuisance in terms of noise and odor. The approval of this variance would result in a trash enclosure that is closer to the neighbor's property than otherwise allowed.

*D. The property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district:*

In the application, the applicant asserts there will be no adverse affect on the only neighbor since he is requesting a minimal variance and his development would be buffered from the other property with vegetation.

Having only one neighbor is not a unique or peculiar circumstance in the MU district. However, based on other rationale, staff has found that the applicant has met this standard:

Concerning all of the development requiring a variance, staff has found that the property has a unique or peculiar circumstance for a parcel in the MU district. The property owner has the right to reconstruct eight dwelling units on the site, but it is uniquely shaped and surrounded by shoreline setbacks on all other sides other than small segment along US 1. There are no variances to shoreline setbacks for residential development. However, it should be noted that the applicant chose to construct detached units that are larger in size than those being replaced. This decision has led to some of the development constraints.

*E. Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns:*

1 In the application, the applicant asserts that he relied upon advice from staff and built to a  
2 5' setback.

3  
4 Since there is no evidence supporting the claim of a lesser 5' setback and a building  
5 permit or revision for the a/c unit and slabs was never applied for, the assertion relating to  
6 alleged staff misinformation is unfounded. However, based on other rationale,  
7 concerning all of the development requiring a variance, staff has found granting the  
8 variance will not give the applicant any special privilege denied other properties in the  
9 immediate neighborhood in terms of the provisions of the land development regulations  
10 or established development patterns. Staff could not find any record of any person in the  
11 immediate neighborhood requesting a similar or comparable request.  
12

13 F. *Granting the variance is not based on disabilities, handicaps or health of the applicant or*  
14 *members of his family:*

15  
16 Concerning all of the development requiring a variance, staff has found that granting the  
17 variance would not be based on disabilities, handicaps or health of the applicant or  
18 members of his family.  
19

20 G. *Granting the variance is not based on the domestic difficulties of the applicant or his*  
21 *family:*

22  
23 Concerning all of the development requiring a variance, staff has found that granting the  
24 variance would not be based on the domestic difficulties of the applicant or his family.  
25

26 H. *The variance is the minimum necessary to provide relief to the applicant:*  
27

28 In the application, the applicant asserts that the variance is the minimum necessary to  
29 provide relief. However, it should be noted that the applicant was only speaking for the  
30 two existing elevated concrete slabs, the existing a/c unit and the proposed generator.  
31

32 Staff has found that the applicant has met this standard for the location of some of the  
33 development, while not meeting the standard for other:  
34

35 Concerning the existing 8' x 4' elevated concrete slab and existing a/c unit, staff has  
36 found that the request of 2' is the minimum necessary to provide relief. The slab and a/c  
37 unit are in place. It does not appear that the slab or existing a/c unit can be modified at  
38 this location to be closer to the residence and further from the property line and meet  
39 building code.  
40

41 Concerning the existing 5' x 3' elevated concrete slab and proposed generator, staff found  
42 that the request of 1' is not the minimum necessary to provide relief. Although the slab is  
43 in existence, there are several other options for locating a generator. Furthermore, it  
44 possible that the slab could be trimmed by 1' and a small generator could be placed on  
45 the slab in this location.

Concerning the concrete footing supporting the pier, staff has found that the request is the minimum necessary to provide relief. The footing is in place and only encroaches into the setback by 3.6". As there is no visual impact from its existing location, its modification by removing 3.6" inches would serve little purpose.

Concerning the existing ground level concrete slab and swimming pool equipment, staff has found that the request of less than 2' is the minimum necessary to provide relief. Without its full removal, it does not appear that the slab and equipment can be modified to be closer to the residence and further from the property line and meet building code.

Concerning the proposed driveway, staff has found a variance of 2' would be the minimum necessary to provide relief; however not for 5' as shown on the site plan. There appears to be at least 3' feet to shift the driveway inward; however a 5' shift would result in the driveway being unsafely located too near Unit 1 on the site plan. As a note, concerning a variance of 5' (which cannot be approved under this application as advertised), staff has found a variance of 5' would not be the minimum necessary to provide relief.

Concerning the proposed trash enclosure, staff found that 7' is not the minimum necessary to provide relief. There are several other viable locations for a trash enclosure within the as-of-right buildable area of the site. As a note, a variance of 7' cannot be approved under this application as advertised.

#### V RECOMMENDATION:

If the application is considered as a whole, staff recommends denial to the Planning Commission for a variance of 2' from the required 10' side yard setback.

However, staff is supportive of itemizing the variance request and limiting approval to specific development in specific locations. Specifically, staff recommends 1) approval of the variances for the existing ground level concrete footing supporting building's pier as-built and the existing ground level concrete slab and swimming pool equipment as-built; 2) approval of the variance for the proposed driveway for 2' not for 5' as shown on the site plan; and 3) denial of the variances for the existing 8' x 4' elevated concrete slab and existing a/c unit as-built, the existing 5' x 3' elevated concrete slab as-built, the proposed generator and the proposed trash enclosure. If such an action is supported by the Planning Commission, staff recommends approval with the following within conditions:

- A. The existing 8' x 4' elevated concrete slab and existing a/c unit do not meet one of the required standards for a variance: *c) granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public.* Prior to any variance being approved for the other development via the signing of a resolution by the planning commission chair, the 8' x 4' elevated concrete slab and a/c unit shall be a) demolished and relocated to another



1 location within the site's as-of-right buildable area or b) modified by 2' to fall within the  
2 site's as-of-right buildable area.  
3

- 4 B. The existing 5' x 3' elevated concrete slab and proposed generator do not meet four of  
5 the required standards for a variance: *a) the applicant demonstrates a showing of good*  
6 *and sufficient cause; b) failure to grant the variance would result in exceptional hardship*  
7 *to the applicant; c) granting the variance will not result in increased public expenses,*  
8 *create a threat to public health and safety, create a public nuisance, or cause fraud or*  
9 *victimization of the public; and h) the variance is the minimum necessary to provide*  
10 *relief to the applicant.* Prior to any variance being approved for the other development  
11 via the signing of a resolution by the planning commission chair, the 5' x 3' elevated  
12 concrete slab shall be a) demolished and relocated to another location within the site's as-  
13 of-right buildable area or b) modified by 1' to fall within the site's as-of-right buildable  
14 area.  
15
- 16 C. The approval of this variance for the existing ground level concrete footing supporting  
17 the building's pier is based on the location and dimensions shown on the as-built  
18 boundary survey by R.E. Reese, P.A. dated September 15, 2009. Alterations to the  
19 structure within the required setback may not be carried out without additional Planning  
20 & Environmental Resources Department approval.  
21
- 22 D. The approval of this variance for the existing ground level concrete slab and swimming  
23 pool equipment is based on the development in place and documented by staff in  
24 photographs on a site inspection. Alterations to the structure within the required setback  
25 may not be carried out without additional Planning & Environmental Resources  
26 Department approval.  
27
- 28 E. The approval of this variance for the proposed driveway is for 2' only. The site plans by  
29 Perez Engineering & Development, Inc. dated May 12, 2006 and last revised on August  
30 27, 2009 and by Farrell Design Association Inc. dated April 6, 2006 show a 5' setback.  
31 Prior to the construction of the driveway, the applicant shall apply for a building permit  
32 to install/construct the driveway and shall include a revised site plan in the application  
33 showing that the driveway's edge is at least 8' from the western property line.  
34
- 35 F. The applicant shall apply for and receive a building permit to construct a solid enclosure  
36 around the concrete slab housing the swimming pool equipment to mitigate noise. This  
37 enclosure shall be in place and maintained as long as the swimming pool equipment  
38 remains in existence in the setback.  
39
- 40 G. The applicant shall plant and maintain landscaping, the type of which shall be approved  
41 by the Director of Planning, to screen and buffer the development on the subject property  
42 from being visible from the neighboring property.  
43

1 H. This variance is only to allow the structure as detailed in Conditions C, D and E. It does  
2 not waive the required side yard setback or any other setbacks for any future structures or  
3 uses.  
4

5  
6  
7 VI PLANS REVIEWED:  
8

9 A. Boundary Survey by R.E. Reece, P.A, dated February 26, 2009

10 B. Boundary Survey by R.E. Reece, P.A, dated September 15, 2009

11 C. Site Plan by Perez Engineering & Development, Inc, dated May 12, 2006 and last revised  
12 on August 27, 2009 (submitted with application for Building Permit 062-6982)

13 D. Site Plan by Farrell Design Association Inc., dated April 6, 2006 (submitted with  
14 application for Building Permit 072-1885, as well as applications for the other single-  
15 family residences)

16 E. Main Level Floor Plan by Island Style Architects, dated October 5, 2006 (submitted with  
17 application for Building Permit 072-1885)

**Attachment: Photographs**



**Subject Residence (2009)**



**Existing 8' x 4' Elevated Concrete Slab and Existing A/C Unit &  
Existing 5'x 3' Elevated Concrete Slab and Proposed Generator Location (2009)**





**Existing Ground Level Concrete Slab and Swimming Pool Equipment (2009)**



**Existing Ground Level Concrete Footing Supporting Building's Pier (2009)**